

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: SB2126

INTRODUCER: Senator King

SUBJECT: Public Records/Cable and Video Service Providers

DATE: April 10, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Caldwell	Caldwell	CU	Pre-meeting
2. _____	_____	CM	_____
3. _____	_____	GO	_____
4. _____	_____	RC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill creates an exemption from public records for certain information received from cable and video service providers by the Office of Program Policy Analysis and Government Accountability (OPPAGA) for purposes of creating a report on competition.

This bill creates a new, yet unnumbered section of the Florida Statutes.

II. Present Situation:

Public Access - Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, State Constitution – Section 24(a), Art. I of the State Constitution provides the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Florida's Public Records Law – Florida's public records law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act - The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the

¹ s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

² s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Article I, s. 24(c) of the State Constitution

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Section 610.119, F. S. provides for the OPPAGA to report by December 1, 2009, and December 1, 2014, to the President of the Senate, Speaker of the House of Representatives, and the majority and minority leaders of the Senate and House of Representative on the status of competition in the cable and video service industry. The report is to include, by each municipality and county, the number of cable and video service providers, the number of cable and video subscribers served, the number of areas served by fewer than two cable or video services providers, the trend in cable and video service prices, and the identification of any patterns of service as they impact demographic and income groups.

The statutes currently do not contain an exemption for the confidential, proprietary information that OPPAGA may receive from companies as a result of any data request.

III. Effect of Proposed Changes:

Section 1 creates a public records exemption for information received from cable and video service providers by the OPPAGA and all information collected and maintained by the office concerning the status of competition in the cable and video service industry. Such information is confidential and exempt from public disclosure to s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill also provides that the exemption stands repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides the Legislative finding of public necessity to exempt the information from public disclosure all information received which is used to determine the extent of competition in the cable and video service industry in this state in order to evaluate the industry's ability to provide cable or video service based on factors such as availability, price, and quality of service to the customers.

Section 3 provides that the act takes effect on the same date as an unspecified Senate Bill or similar legislation takes effect, if such legislation is enacted in the same legislative session, or an extension thereof, and becomes law. Currently this bill is tied to SB 2092.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for information received from cable and video service providers by the OPPAGA and all information collected and maintained by

the office concerning the status of competition in the cable and video service industry. In accordance with s. 24, Art. I, State Constitution, the bill requires a two-thirds vote of each house of the Legislature for enactment.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public will not have access to confidential, proprietary information received by OPPAGA in the course of its data collection for use in a report to the Legislature.

C. Government Sector Impact:

OPPAGA does not anticipate any additional workload should this information need confidential treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.